

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
JAN 20 2004

CIRCLE GROUP INTERNET, INC., an
Illinois corporation,

Plaintiff,

v.

ATLAS, PEARLMAN, TROP & BORKSON,
P.A., ROXANNE K. BEILLY, CHARLES B.
PEARLMAN and ELLA CHESTNUTT,

Defendants.

Case No. 03-CV-09004

Other Case No. 02-61082-CIV

NOTICE OF MOTION

TO: Counsel of Record

On January 12, 2003 at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Joan H. Lefkow, or any judge sitting in her stead, in Room 1925 or the courtroom usually occupied by her the United States Courthouse, 219 S. Dearborn Street, Chicago, Illinois, and shall then and there present the Petition to Enforce Subpoena, a copy of which is attached and was previously served upon you.

Respectfully submitted,

ATLAS, PEARLMAN, TROP &
BORKSON, P.A. ROXANNE K. BEILLY,
CHARLES B. PEARLMAN and ELLA
CHESNUTT

By: 

One of Their Attorneys

FILED

DEC 29 2003

MICHAEL W. DOBINS
CLERK, U.S. DISTRICT COURT

Stacey L. Smiricky
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP
120 North LaSalle Street, Suite 2600
Chicago, Illinois 60602
(312) 704-0550

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served on all counsel of record by U.S. Mail, postage prepaid, enclosed in an envelope properly addressed to:

Jeffrey D. Barclay, Esq.

TRESSLER, SODERSTROM, MALONEY & PRIESS
Sears Tower, 22nd Floor
233 S. Wacker Drive
Chicago, Illinois 60606-6308


Mary Leslie Smith, Esq.

BUCHANAN INGERSOLL, PC
2100 Bank of America Tower
100 S.E. Second Street
Miami, Florida 33131

Gary I. Blackman, Esq.

LEVENFELD PEARLSTEIN, P.A.
Two North LaSalle Street, Suite 1300
Chicago, IL 60602

before the hour of 5:00 p.m. this 17th day of December, 2003.



Stacey L. Smiricky

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CIRCLE GROUP INTERNET, INC., an
Illinois corporation,

Plaintiff,

v.

ATLAS, PEARLMAN, TROP & BORKSON,
P.A., ROXANNE K. BEILLY, CHARLES B.
PEARLMAN and ELLA CHESTNUTT,

Defendants.

03C9004 DOCKETED
JAN 20 2004
(IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION)

FILED

DEC 29 2003

MICHAEL W. JOHNS
CLERK, U.S. DISTRICT COURT

PETITION TO ENFORCE SUBPOENA

Defendants, ATLAS, PEARLMAN, TROP & BORKSON, P.A. ROXANNE K. BEILLY, CHARLES B. PEARLMAN and ELLA CHESNUTT, pursuant to Federal Rules of Civil Procedure 30, 37(a)(1), (3) & (4)(A) respectfully request that this Court compel U.S. Bank f/k/a Firstar Bank and its employee Mario Valente to comply with the Federal Rules of Civil Procedure, and in support thereof, state as follows:

INTRODUCTION

This matter is currently pending in the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division. Rule 37 of the Federal Rules of Civil Procedure is titled "Failure to make Disclosure or Cooperate in Discovery; Sanctions." Fed. R. Civ. P. 37(a)(1) provides that "An application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be taken."

The Plaintiff in this case hails from Mundelein, Illinois and as a result, much of the Defendant's discovery efforts are undertaken in the state of Illinois.¹ As more fully described below, Defendants seek relief from the U.S. District Court for the Northern District of Illinois as proscribed by the Federal Rules of Civil Procedure in connection with Defendants subpoena for deposition served on Mario Valente (a U.S. Bank employee) in Mundelein, Illinois.

ARGUMENT

1. On November 10, 2003, Mario Valente (Branch Operations Manager at U.S. Bank f/k/a Firststar Bank) was served in Mundelein, Illinois with a subpoena duces tecum for deposition. (copy attached hereto as exhibit "A").

2. On December 2, 2003, the deposition of Mr. Valente was commenced pursuant to said subpoena at the offices of the undersigned counsel in its Chicago, Illinois office.

3. At the deposition, Mr. Valente was represented by Mr. Gary Blackman of the Levenfeld Pearlstein law firm.

4. During the course of the deposition and while a question was pending, Mr. Blackman asked the witness if he "wanted to step out" of the room. In addition, Mr. Blackman coached the witness and stated that the witness "is allowed to step out at any point in time" as well as "talk to his counsel at any point in time even during while there's a question pending." (See attached deposition transcript, Exhibit "B" at pages 22 and 23)

5. Mr. Blackman also instructed Mr. Valente not to answer specific questions without raising proper objections. (See Exhibit "B" pages 30-34)

¹ The discovery cut-off in this case is January 30, 2004 pursuant to order of the U.S. District Court for the Southern District of Florida.

6. Mr. Blackman obstructed undersigned counsel's ability to fully complete the deposition by instructing Mr. Valente not to answer.

7. On December 9 and 10, 2003, undersigned counsel telephoned Mr. Blackman regarding his improper objections and instructions to the witness as well as Mr. Valente's failure to answer proper deposition questions.

8. Mr. Blackman is in flagrant violation of both the letter and spirit of the Rules of Civil Procedure pertaining to deposition testimony.

9. Pursuant to F.R.C.P. 37 and Local Rule 37.2, undersigned counsel has made a good faith attempt to resolve the issue, but counsel's attempt to engage in such consultation was unsuccessful due to no fault of counsel.

WHEREFORE, Defendants, ATLAS, PEARLMAN, TROP & BORKSON, P.A. ROXANNE K. BEILLY, CHARLES B. PEARLMAN and ELLA CHESNUTT request that this Honorable Court compel Mr. Valente to complete the deposition with appropriate and complete responses, to sanction Mr. Blackman for his flagrant violations of the Federal Rules of Civil Procedure and to grant Defendants such other and further relief as this Honorable Court deems just and equitable.

Respectfully submitted,

ATLAS, PEARLMAN, TROP &
BORKSON, P.A. ROXANNE K. BEILLY,
CHARLES B. PEARLMAN and ELLA
CHESNUTT

By: 

One of Their Attorneys

Stacey L. Smiricky
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP
120 North LaSalle Street, Suite 2600
Chicago, Illinois 60602
(312) 704-0550

Issued by the
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

**CIRCLE GROUP INTERNET, INC., an
Illinois Corporation,**

Plaintiff

vs.

**ATLAS, PEARLMAN, TROP & BORKSON, P.A.,
ROXANNE K. BEILLY, CHARLES B.
PEARLMAN and ELLA CHESNUTT,**

Defendants.

SUBPOENA DUCES TECUM WITH DEPOSITION

**(UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION)**

Case No. 02-61082-CIV-Dimitrouleas

Pending

TO: Mario Valente, Branch Operations Manager or Person with the most knowledge to give testimony as to Items listed on Schedule A and Exhibit A attached hereto
Firstar Bank, n/k/a U.S. Bank
2000 South Lake Street
Mundelein, IL 60060

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF DEPOSITION

DATE AND TIME

**Wilson, Elser, Moskowitz, Edelman & Dicker LLP
120 North LaSalle Street, 26th Floor
Chicago, Illinois 60602-2412**

**Wednesday, November 19th @
3:00 p.m.**

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): * * * **SEE SCHEDULE "A" ATTACHED** * * *

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorneys for Defendant

October 30, 2003

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

**James M. Kaplan, Esq. and H. Steven Vogel, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
3800 Bank of America Tower, 100 SE Second Street
Miami, Florida 33131 Phone: (305) 374-4400**

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

If action is pending in district other than district of issuance, state district under case number.

EXHIBIT

A

PROOF OF SERVICE

SUBPOENA SERVED		DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
SERVED BY (PRINT NAME)		TITLE	
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service true and correct.			
Executed on _____			
Date		Signature of Server	
Address of Server			

Rule 45, Federal Rules of Civil Procedure, Parts C & D:**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the

place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonable compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE "A"

Topics to be Covered

1. The accounts at the Firststar Bank held in the name of Circle Group Internet, Inc.
2. The receipt by the bank of a certain draft dated April 10, 1999 in the amount of \$10,000,000.00 payable to Circle Group Internet, Inc., a copy of which is annexed hereto.
3. The policies, procedures, rules and regulations governing the receipt of checks and drafts for deposit and/or collection during 1999 at the Firststar Bank of Illinois.

SCHEDULE "A"

Documents to be Produced

1. Any and all documents pertaining to the deposit of the bank drafts dated April 10, 1999 and April 12, 1999, attached hereto as Exhibit A, to the account of Circle Group Internet, Inc., Reg D Funds 42266477, Account No. 071904779, as indicated on the second page of Exhibit A. Documents should include, but not be limited to, deposit slips, notice of insufficient funds, notice indicating funds "cleared", bank statements, and any other documents that reflect the transactional history and disbursement of the funds reflected on Exhibit A.
2. Any and all bank statements for Circle Group Internet, Inc., Reg D Funds 42266477, Account No. 071904779 for the time period January 1, 1999 through September 30, 2000.
3. Any and all procedures, rules, regulations governing acceptance of funds or deposits to or for accounts of Firststar Bank Illinois for the time period January 1, 1999 through December 31, 1999.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true and correct copy of the above and foregoing was served on all counsel of record by U.S. Mail, postage prepaid, enclosed in an envelope properly addressed to:

Jeffrey D. Barclay, Esq.
TRESSLER, SODERSTROM, MALONEY & PRIESS
Sears Tower, 22nd Floor
233 S. Wacker Drive
Chicago, Illinois 60606-6308

Mary Leslie Smith, Esq.
BUCHANAN INGERSOLL, PC
2100 Bank of America Tower
100 S.E. Second Street
Miami, Florida 33131

Gary I. Blackman, Esq.
LEVENFELD PEARLSTEIN, P.A.
Two North LaSalle Street, Suite 1300
Chicago, IL 60602

before the hour of 5:00 p.m. this 10th day of December, 2003.



Stacey L. Smiricky

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF ILLINOIS
3 FT. LAUDERDALE DIVISION
4 Case No. 02-61082 CIV-Dimitrouleas

5
6 CIRCLE GROUP INTERNET, INC.,)
7 an Illinois Corporation,)
8 Plaintiff,)
9 vs.)
10 ATLAS PEARLMAN, TROP & BORKSON,)
11 P.A., ROXANNE K. BEILLY, CHARLES)
12 B. PEARLMAN and ELLA CHESTNUTT,)
13 Defendants.)

14
15 The deposition of MARIO VALENTE,
16 called for examination, taken pursuant to the
17 Federal Rules of Civil Procedure of the United
18 States District Courts pertaining to the taking
19 of depositions, taken before ANNETTE M. MONTALVO,
20 a Notary Public within and for the County of
21 Lake, State of Illinois, and a Certified
22 Shorthand Reporter of said state, at Suite 2600,

23 120 North LaSalle, Chicago, Illinois, on the 2nd
24 day of December, 2003, at 9:19 a.m.

AMM

□

2

1 PRESENT:

2

3 TRESSLER, SODERSTROM, MALONEY & PRIESS,
4 (Sears Tower, 22nd Floor,
5 233 South Wacker Drive,
6 Chicago, Illinois 60606,
7 312-627-4075), by:
8 MR. JEFFREY D. BARCLAY,
9 appeared on behalf of the Plaintiff;

10

11 WILSON, ELSER, MOSKOWITZ, EDELMAN &
12 DICKER, LLP,
13 (3800 Nations Bank Tower,
14 100 S.E. Second Street,
15 Miami, Florida 33131,
16 305-374-4400), by:
17 MR. JAMES M. KAPLAN,

Vale1202

18 appeared on behalf of the Defendants;
19
20
21
22
23
24

AMM

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1 PRESENT: (Continued)

2

3

LEVENFELD PEARLSTEIN,

4

(Two North LaSalle Street, Suite 1300,

5

Chicago, Illinois 60602,

6

312-476-7536), by:

7

MR. GARY I. BLACKMAN,

8

appeared on behalf of US Bank

9

and the Deponent.

10

11

12

13 ALSO PRESENT: MR. GREG HALPERN.

14

15

16

17

18 REPORTED BY: ANNETTE M. MONTALVO, CSR, RMR,

19 CSR Certificate No. 84-3967.

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1 (NOTE: Mr. Greg Halpern was not
2 present at the commencement of the
3 deposition.)

4 (WHEREUPON, the witness was duly
5 sworn.)

6 MARIO VALENTE,

7 called as a witness herein, having been first

8 duly sworn, was examined and testified as
9 follows:

10 EXAMINATION

11 BY MR. KAPLAN:

12 Q. Would you state your name and business
13 address for the record.

14 A. Mario Valente. 2000 South Lake
15 Street, Mundelein, Illinois, 60060. US Bank.
16 Title?

17 Q. Yes.

18 A. Assistant manager now.

19 Q. Okay. I'm going to ask you a few
20 questions this morning about one of the accounts
21 at First Star Bank of Circle Group. If you don't
22 understand my question, let me know and I will
23 rephrase it so that you do. I think the
24 proceedings this morning will be fairly short,

AMM

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5

1 but if you need to take a break, let me know and
2 we'll do that.

3 Was there a time when you worked for
4 First Star Bank?

5 A. Yes.

6 Q. Okay. And when did that cease,
7 approximately?

8 A. Three years ago, four years ago.

9 Q. Was First Star merged into US Bank?

10 A. Yes.

11 Q. Okay. Are you familiar with an
12 account called Circle Group Internet?

13 A. Yes, I am.

14 Q. How did you become familiar with that
15 account?

16 A. I worked at -- I was working at the
17 bank when they first opened the account.

18 Q. Okay. Do you know Greg Halpern?

19 A. Yes.

20 Q. How long have you known Greg Halpern?

21 A. Since he opened the account.

22 Q. Okay. You did not know him before
23 that?

24 A. No.

1 Q. Okay. Was Circle Group the largest
2 account at the branch where you worked?

3 A. When you say "was," at the time or --

4 Q. At that time.

5 A. No.

6 Q. Okay. You have produced some
7 documents for me this morning pursuant to a
8 subpoena. Let me just ask you first to identify
9 the subpoena. I put it in front of you as
10 Exhibit 63.

11 (WHEREUPON, a certain document
12 was marked Deposition
13 Exhibit No. 63, for
14 identification, as of 12/2/03.)

15 BY MR. KAPLAN:

16 Q. Is this the subpoena that you
17 received?

18 A. Yes.

19 Q. Okay. And you brought me some
20 documents this morning. You brought me some bank
21 statements. I don't think we're going to look at

22 those. And you brought me two other documents.
23 One document, front and back, a letter with a
24 check, and another document, a copy of the same

AMM

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7

1 check, but with some different handwriting along
2 the side. We'll go through those in order.

3 Why don't we mark the letter as
4 Exhibit 64.

5 (WHEREUPON, a certain document
6 was marked Deposition
7 Exhibit No. 64, for
8 identification, as of 12/2/03.)

9 BY MR. KAPLAN:

10 Q. Is Exhibit 64 a copy of a letter that
11 you wrote?

12 A. Yes.

13 Q. Okay. What is the purpose of Exhibit
14 64?

15 A. To send the item in question to our
16 international collection department which was in

17 Milwaukee.

18 Q. Which was where?

19 A. In Milwaukee, Wisconsin.

20 Q. Okay. And why did you send the check
21 to Milwaukee?

22 A. Because I could not process it at the
23 branch.

24 Q. Why not?

AMM

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8

1 A. Because it was a foreign draft which
2 cannot be processed through regular channels. It
3 needs special attention so it has to go to our
4 collection department.

5 Q. Do all foreign drafts have to go to a
6 collection department?

7 A. Yes.

8 MR. KAPLAN: Okay. Let's mark as Exhibit 65
9 the back of the letter, which appears to be a
10 copy of a check, a certified mail slip, and some
11 handwriting.

Vale1202

12 (WHEREUPON, a certain document
13 was marked Deposition
14 Exhibit No. 65, for
15 identification, as of 12/2/03.)

16 BY MR. KAPLAN:

17 Q. Okay. Does your handwriting appear on
18 Exhibit 65?

19 A. Yes, sir.

20 Q. Okay. And you see toward the top of
21 the page there's a copy of what appears to be a
22 draft; is that right?

23 A. Yes, sir.

24 Q. How did you come into possession of

AMM

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9

1 this check or draft?

2 A. It was brought to me by Circle Group
3 for deposit, to be deposited into the account.

4 Q. Okay. Was it actually deposited in
5 their account?

6 A. No.

7 Q. Why not?

8 A. Because being a foreign draft, I could
9 not send it through the regular processing and it
10 had to go through special handling through the
11 collection department.

12 Q. So when someone brings you a check on
13 a foreign bank or a draft on a foreign bank, it
14 is never accepted for deposit, it is only
15 accepted for collection?

16 A. Correct, unless it is Canadian check.

17 Q. Canadian checks you accept for
18 deposit?

19 A. Correct, which also may be different
20 from bank to bank.

21 Q. Okay. Who at Circle Group gave you
22 this check?

23 A. That I don't remember.

24 Q. Had anyone ever given you a check for

AMM

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1 \$10 million before?

2 A. I would say two more times.

3 Q. Okay. It is a very large check, isn't
4 it?

5 A. Yes, sir.

6 Q. Okay. Did you have any conversation
7 with the customer about the check?

8 A. Don't remember precisely, but I'm sure
9 I did because I had explained to him that the
10 check could not be processed, I had to send it
11 for collection, you know, explain what was going
12 to take place with that particular check.

13 Q. Okay. So when the customer gave you
14 this check for \$10 million, what kind of paper
15 did the customer get in return from you? A
16 receipt, a deposit slip, an acknowledgment,
17 anything at all?

18 A. Nothing.

19 Q. The customer just gave you a check and
20 walked away with nothing?

21 A. (Indicating).

22 MR. BLACKMAN: Objection. Asked and
23 answered.

24 BY MR. KAPLAN:

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1 Q. Is that typical?

2 MR. BLACKMAN: Object as to what is
3 typical. It is an incomplete hypothetical.

4 You can go ahead and answer.

5 BY MR. KAPLAN:

6 Q. When you accept foreign drafts --

7 MR. BLACKMAN: Are you withdrawing the
8 previous answer?

9 MR. KAPLAN: Yes.

10 MR. BLACKMAN: Okay. You didn't state that
11 for the record.

12 MR. KAPLAN: Okay.

13 MR. BLACKMAN: The previous question is
14 withdrawn. Okay. Go ahead.

15 MR. KAPLAN: Thank you.

16 BY MR. KAPLAN:

17 Q. When you accept foreign drafts, except
18 on Canadian drafts, when you accept foreign
19 drafts and nonCanadian drafts, do you typically
20 give the customer some receipt or other evidence

21 that you have received a draft subject to
22 collection?

23 MR. BLACKMAN: Object as to relevance, as to
24 "typically," but you can go ahead and answer.

AMM

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12

1 BY THE WITNESS:

2 A. My personal experience, okay, not
3 saying bank procedure, my personal experience, I
4 typically make a copy of the item, stamp it, the
5 date that I received it, sign it that I received
6 it, and give that copy to the customer.

7 BY MR. KAPLAN:

8 Q. Okay. I am going to ask you to look
9 at the subpoena because it has copies of the
10 front and back of the check. Can you point me to
11 anything on the check that is in your handwriting
12 or that you put on the check? I am talking about
13 the \$10 million check that we have been talking
14 about.

15 A. That I put on the check?

16 Q. Yes.

17 A. No.

18 Q. Going back to Exhibit 64, which is the
19 letter, looks like you sent this letter to a
20 woman named Niki in Milwaukee; is that correct?

21 A. Right.

22 Q. Okay. And you would have done this on
23 or about April 17 of 1999?

24 A. Correct.

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13

1 Q. After you transmitted the letter to
2 Milwaukee, what was the next thing you heard
3 about the status of the collection?

4 A. Don't remember. Probably nothing
5 because the -- I actually forgot all about it
6 until I received the subpoena.

7 Q. Were the funds collected?

8 A. No.

9 Q. How do you know?

10 A. Because I just looked at the statement

11 and there was never a deposit.

12 Q. Okay. So based on the fact that the
13 statements that you looked at don't show a
14 deposit, you concluded that the funds were not
15 collected?

16 A. Right.

17 Q. What became of the check?

18 A. Don't know.

19 Q. How was the customer advised that the
20 funds could not be collected?

21 A. Most likely from the international
22 department.

23 MR. BLACKMAN: As we discussed, I do not
24 want you to assume or guess because you are

AMM

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14

1 under --

2 BY THE WITNESS:

3 A. Don't know.

4 MR. BLACKMAN: -- because you are under
5 oath. Only tell the attorney what you have

6 personal knowledge of and what you know to be
7 true. If you don't know, it is okay to say you
8 don't know.

9 BY THE WITNESS:

10 A. Okay. I'm sorry. Then --

11 BY MR. KAPLAN:

12 Q. Your answer is you don't know?

13 A. Right.

14 Q. Okay. At First Star Bank, if a check
15 drawn on a foreign bank, nonCanadian, is given
16 over to be collected, but it cannot be collected,
17 what was the custom and practice at the bank as
18 to how the customer was advised?

19 A. I'm sorry, could you repeat that.

20 Q. Certainly.

21 At First Star Bank in 1999, if a
22 customer gave you a foreign check on a
23 nonCanadian bank, you would turn it over to the
24 collection department, correct?

AMM

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15

1 A. (Indicating).

2 Q. If the collection department could not
3 collect, what was the bank's practice as to how
4 the customer would be advised that his check
5 couldn't be collected?

6 A. If I was informed that the item could
7 not be collected, then I would notify the
8 customer that the item cannot be collected.

9 Q. Okay. Suppose no one told you, do you
10 know what the bank would do from a collection
11 department or any other department?

12 A. Would notify the customer.

13 Q. Would the customer be notified in
14 writing?

15 A. Don't know because it is not my
16 department, but --

17 MR. BLACKMAN: Don't guess. If you don't
18 know, you can say you don't know. He is asking
19 you what you know about the bank's policies.

20 BY THE WITNESS:

21 A. Okay. Don't know.

22 BY MR. KAPLAN:

23 Q. Okay. Looking at Exhibit 65, the top
24 portion of the page, which is the check, do you

AMM

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16

1 see that the check is denominated in Rupees?

2 A. (Indicating).

3 Q. But the amount written in was in
4 dollars. Do you see what I am talking about?

5 A. Uh-huh.

6 Q. That's a yes?

7 A. Yes.

8 Q. Okay. So did the fact that the check
9 was denominated in one currency, but the amount
10 was written in another currency cause any problem
11 for you as the banker?

12 MR. BLACKMAN: I'm going to object to the
13 term "for you as the banker." I'm not sure what
14 that means.

15 BY MR. KAPLAN:

16 Q. Okay. Cause any problem for First
17 Star Bank?

18 A. I don't know.

19 Q. Okay. After you mailed the check to

20 Niki in the collections department in Milwaukee,
21 did you ever follow up with her to see what the
22 status of the collection was?

23 A. Don't remember because I don't have
24 any notes. If I did, I would have some notes.

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1 Q. In 1999 was Circle Group one of your
2 larger accounts?

3 A. No.

4 MR. KAPLAN: Okay. Mark this as 66.

5 (WHEREUPON, a certain document
6 was marked Deposition
7 Exhibit No. 66, for
8 identification, as of 12/2/03.)

9 BY THE WITNESS:

10 A. Um --

11 MR. BLACKMAN: There's no question pending.
12 If you want to talk to me about an answer that
13 you gave or something, we can go step out of the
14 room. Do you want to do that?

15 THE WITNESS: (Indicating).

16 MR. BLACKMAN: Okay. Let's take a break for
17 a minute.

18 (WHEREUPON, there was a conference
19 between the witness and counsel,
20 outside the presence and hearing
21 of other counsel and the court
22 reporter.)

23 BY MR. KAPLAN:

24 Q. Okay. Do you need to supplement the

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18

1 record?

2 MR. BLACKMAN: Yes. Why don't you go ahead.

3 BY THE WITNESS:

4 A. On your last question, was Circle
5 Group in 1999 one of the larger accounts of the
6 bank.

7 Q. Yes.

8 A. I said no.

9 Q. Right.

10 A. I would like to change that to,
11 really, I don't know because, you know, I don't
12 know the other accounts, all the accounts at the
13 bank.

14 Q. Was Circle Group one of the larger
15 accounts that you personally dealt with?

16 A. No.

17 Q. Okay. I put in front of you Exhibit
18 66, which is another copy of the check, but it
19 has some handwriting on it.

20 Is that your handwriting?

21 A. Yes, sir.

22 Q. Okay. It looks like there's a note in
23 the upper left-hand corner that there's \$71 in
24 handling charges and \$40 commission, do you see

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19

1 that?

2 A. Yes.

3 Q. What is that?

4 A. That's some of the charges that would

5 have been involved in processing this draft as a
6 collection.

7 Q. So the customer was charged for trying
8 to collect this?

9 A. No. It would have -- well, don't
10 know. But usually when I pass a collection, I
11 always ask for fees involved, and I let the
12 customer know. Whether it was charged, I don't
13 know.

14 Q. Okay. Did the customer agree to pay
15 these fees?

16 A. Don't remember.

17 Q. Did you personally return the
18 uncollected check back to Circle Group?

19 A. Don't remember.

20 MR. KAPLAN: Let's mark this as the next
21 exhibit. It is going to be 67.

22 (WHEREUPON, a certain document
23 was marked Deposition
24 Exhibit No. 67, for

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1 identification, as of 12/2/03.)

2 BY MR. KAPLAN:

3 Q. I put Exhibit 67 in front of you. Can
4 you tell me what that is?

5 A. That's a letter that I prepared after
6 talking to Niki at our international department,
7 which I mailed the draft to her.

8 MR. BLACKMAN: Are you looking at the right
9 letter?

10 BY MR. KAPLAN:

11 Q. I don't think you are looking at the
12 right document.

13 A. Okay. I'm sorry.

14 Q. Take a look at Exhibit 67.

15 A. I'm sorry. Sure. Okay.

16 Q. Okay. Can you tell me what Exhibit 67
17 is?

18 A. It is a letter signed by me stating --
19 confirming to Mr. Halpern that the balance was in
20 excess of \$2 million.

21 Q. Why did you send this letter to
22 Mr. Halpern?

23 A. Don't remember.

24 Q. Did he ask you to do it?

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1 A. Don't remember, but he must have.

2 MR. BLACKMAN: Don't guess. If you don't
3 remember, you don't remember.

4 BY THE WITNESS:

5 A. I'm sorry.

6 BY MR. KAPLAN:

7 Q. Do you actually remember preparing and
8 signing this letter?

9 A. I don't remember.

10 Q. Recognizing that it is a copy, does
11 that appear to be your signature?

12 A. Yes.

13 Q. Is it the practice of the bank to
14 confirm balances in writing to third parties if
15 the customer requests it? The customer here is
16 Circle Group, right?

17 A. Right.

18 Q. Okay. So what you're doing in this

19 letter is confirming that the balance in Circle
20 Group's account is more than \$2 million; is that
21 right?

22 A. Yes.

23 Q. Okay. But you are not sending the
24 letter to Circle Group, you are sending the

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1 letter to Mr. Halpern?

2 MR. BLACKMAN: I'm going to let him answer,
3 but I'm going to object. I think your previous
4 question assumes some facts not in evidence. He
5 says that he is not -- doesn't remember sending
6 the letter, doesn't remember the circumstances
7 under which he sent the letter to Greg Halpern,
8 who, I understand, was an officer, director and
9 owner of the company. So it very well --

10 MR. KAPLAN: If your objection --

11 MR. BLACKMAN: Let me finish.

12 MR. KAPLAN: I have sat back and let you
13 clutter the record with speaking objections. It

14 is quite improper.

15 MR. BLACKMAN: That's fine.

16 MR. KAPLAN: Make your objection, and I will
17 rephrase the question if it is necessary.

18 MR. BLACKMAN: I will make my objection. I
19 think that to ask him questions with respect to
20 whether or not it is proper to send something to
21 what you characterized as a third party assumes
22 facts that are not in evidence because he does
23 not recall under the circumstances who he sent
24 this to and for what reason.

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1 MR. KAPLAN: Thank you.

2 BY MR. KAPLAN:

3 Q. Can you answer the question?

4 A. I'm sorry, what's the question?

5 Q. Okay. Does the bank send
6 confirmations of balances to third parties if the
7 customer requests it?

8 A. Don't know because don't know the

9 third party situation. I'm not really familiar
10 with the third party situation.

11 Q. Okay. Did you have any personal or
12 business relationship with Halpern or Circle
13 Group other than as a customer of the bank?

14 MR. BLACKMAN: Do you want to step out?
15 Okay.

16 MR. KAPLAN: I prefer that you not do that
17 while a question is pending.

18 MR. BLACKMAN: We are allowed to do it.

19 MR. KAPLAN: You are not allowed to do it
20 while a question is pending.

21 MR. BLACKMAN: We are allowed to step out at
22 any point in time under the --

23 MR. KAPLAN: Under what? Certainly not the
24 Federal Rules of Civil Procedure.

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1 MR. BLACKMAN: Yes, we are.

2 MR. KAPLAN: A question is pending. You are
3 coaching the witness.

4 MR. BLACKMAN: I am not coaching. He can
5 step out --

6 MR. KAPLAN: He can't talk to you. He needs
7 to answer.

8 MR. BLACKMAN: He can talk to me. He is
9 allowed to talk to his counsel at any point in
10 time even during while there's a question
11 pending.

12 MR. KAPLAN: We are going to mark this for
13 ruling and pursue it. I am not going to
14 obviously physically accost you. This is
15 ridiculous.

16 MR. BLACKMAN: Mark it for ruling. Come
17 on. Let's step out.

18 (WHEREUPON, there was a conference
19 between the witness and counsel,
20 outside the presence and hearing
21 of other counsel and the court
22 reporter.)

23 MR. BLACKMAN: Okay. Can you repeat the
24 question back again, please.

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1 (WHEREUPON, the record was read by
2 the reporter as requested.)

3 MR. BLACKMAN: Go ahead.

4 BY THE WITNESS:

5 A. Yes, I did personally buy stock in the
6 company.

7 BY MR. KAPLAN:

8 Q. How many shares?

9 A. A thousand at one time, a thousand
10 shares another time, and then I think another
11 thousand, so a total of 3,000 shares.

12 Q. Okay. Could it have been 4,000?

13 A. Yes. Actually, yes. Yes, it is
14 4,000.

15 Q. Did you hold those shares in your name
16 or with someone else?

17 A. My name and my brother.

18 Q. Your brother is Guiseppe?

19 A. Right.

20 Q. Do you still own the shares?

21 A. Yes.

22 Q. Have you tried to sell the shares?

23 MR. BLACKMAN: At what point in time?

24 BY MR. KAPLAN:

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1 Q. Beginning in July of 1999?

2 A. No.

3 Q. How much did you pay for the shares?

4 A. \$20 for the first thousand, \$5 for the
5 second and third batch -- I don't remember if I
6 bought two and two at \$20 and two and two at \$5.

7 MR. BLACKMAN: You can just give him an
8 estimate of the total amount that you purchased.
9 He is not asking you to break it down.

10 BY THE WITNESS:

11 A. Oh, I purchased -- I thought it was
12 30,000. Approximately \$30,000, \$35,000.

13 BY MR. KAPLAN:

14 Q. When you bought the shares, did you
15 have to fill out any papers?

16 A. Yes, sir.

17 Q. Okay. Did you pay for the shares by

18 check?

19 A. Yes, sir.

20 Q. How did you -- how were you advised
21 that there were shares of Circle Group available
22 for sale?

23 A. Greg kept talking about that he was
24 involved in this Internet company that he wanted

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1 to take public.

2 Q. And he offered to sell you shares?

3 A. He mentioned to me if I could -- if I
4 knew of anybody that would be interested in the
5 shares.

6 Q. And what did you tell him?

7 A. On the spot I don't remember. You
8 know, I told him that I would think about it
9 because this came after. I didn't buy them when
10 he asked me.

11 Q. Do you remember approximately when he
12 asked you?

13 A. '97, '98.

14 Q. Do you remember approximately when you
15 purchased --

16 A. I think 2000, 2001. It was over a
17 one-year period. I can check -- I have the
18 information at home obviously.

19 MR. BLACKMAN: I am going to -- I am going
20 to raise an objection. I am going to let this go
21 on for a little longer, but I want to see what
22 the relevance of this is, number one. Number
23 two, it is not within the scope of the topics set
24 forth on your subpoena to be covered, which, for

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1 the record, are the accounts at First Star Bank
2 held in the name of Circle Group; the receipt by
3 the bank of a certain draft; and the policies and
4 procedures. So --

5 MR. KAPLAN: We will probably be done in
6 five minutes either way.

7 MR. BLACKMAN: Well, I still maintain that

8 objection.

9 MR. KAPLAN: That's fine.

10 MR. BLACKMAN: And if there's any problem
11 with the next couple questions, we may just stop
12 this line, and if you want to come back and try
13 to reissue a subpoena to cover a topic that you
14 did not identify before, then you can do that if
15 you so choose.

16 MR. KAPLAN: If you stop this deposition and
17 I am going to have to come back, it will only be
18 after the judge rules on sanctions.

19 MR. BLACKMAN: That's fine.

20 MR. KAPLAN: That's fine.

21 BY MR. KAPLAN:

22 Q. Now, thinking about it, do you believe
23 that you had owned 4,000 shares of Circle Group
24 prior to the end of July of 1999?

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1 MR. BARCLAY: Objection. Asked and
2 answered.

3 MR. KAPLAN: No. He told me he believes he
4 purchased the stock in 2000 and 2001.

5 MR. BLACKMAN: No, he didn't.

6 MR. KAPLAN: Okay. Could you read the last
7 question and answer back before the colloquy?
8 Maybe I misheard him.

9 (WHEREUPON, the record was read by
10 the reporter as requested.)

11 BY MR. KAPLAN:

12 Q. Were you explaining to me in that
13 answer that you thought you had purchased the
14 Circle Group shares over a one-year period around
15 2000, 2001?

16 A. Yes.

17 Q. Okay. So my follow-up question to you
18 is, is it possible that you would have completed
19 your purchase of 4,000 shares by July of 1999, or
20 does that seem wrong to you?

21 MR. BARCLAY: Objection. Asked and
22 answered.

23 BY MR. KAPLAN:

24 Q. You can answer.

1 THE WITNESS: I'm sorry?

2 MR. BARCLAY: I am objecting asked and
3 answered.

4 BY MR. KAPLAN:

5 Q. You are permitted to answer the
6 question.

7 A. Oh, I'm sorry. The question again?

8 MR. BLACKMAN: If you are confused or you
9 don't understand the question, then you can ask
10 him to repeat it or rephrase it, and he will.

11 BY THE WITNESS:

12 A. Yes. Just repeat the question.

13 BY MR. KAPLAN:

14 Q. Fine.

15 My question is, is it possible that
16 you actually had completed your purchase of 4,000
17 shares by July of 1999?

18 MR. BARCLAY: I'll object again.

19 BY MR. KAPLAN:

20 Q. You can answer.

21 A. Well, I seem to remember the 2000,

22 2001, so obviously not. I mean, if I'm -- for
23 some reason I have 2000, 2001 in my mind. I
24 don't think I had.

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1 Q. Okay. When Mr. Halpern asked you if
2 you knew anyone who would be interested in buying
3 shares, did you introduce him to anyone?

4 A. I told people about it, yes.

5 Q. Do you know of anyone who actually --
6 that you introduced who actually purchased shares
7 other than yourself?

8 A. Yes.

9 Q. Could you just tell me who?

10 MR. BLACKMAN: I'm going to object to your
11 advising counsel as to the financial affairs of
12 other parties, and who, if anyone, purchased
13 other shares.

14 MR. KAPLAN: Okay. That's not a valid
15 objection. It is not privileged.

16 MR. BLACKMAN: I am instructing him not to

17 answer.

18 MR. KAPLAN: I am telling you right now, if
19 you don't let him answer this question, I am
20 going to seek sanctions. There is no proper
21 ground for that --

22 MR. BLACKMAN: You can do whatever you
23 want. This is beyond the scope of these topics.
24 I will seek sanctions for your inquiring

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1 questions of him that are not covered by the
2 topics listed on the subpoena.

3 MR. KAPLAN: Let's go off the record for a
4 moment unless you haven't completed your
5 objection.

6 MR. BLACKMAN: No, that's it.

7 (WHEREUPON, discussion was had
8 off the record.)

9 (WHEREUPON, Mr. Greg Halpern
10 entered the deposition
11 proceedings.)

12 MR. BLACKMAN: For the record, I am not
13 going to allow the witness to continue to answer
14 any questions of a personal nature with respect
15 to any of his stock investments. These topics
16 were not listed on the topics to be covered --
17 excuse me. Topics -- this was not listed on the
18 topics to be covered with respect to the
19 subpoena. The subpoena was also served on US
20 Bank, and he is here in his capacity as an
21 employee of US Bank, not individually.

22 So any further questions with respect
23 to his personal purchase of stock or any
24 discussions that he in his personal capacity had

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1 with third parties with respect to the purchase
2 of the stock, we will not allow you to go into.

3 If you have any questions with respect
4 to the topics that you've listed, we can go back
5 into those. If you feel that I am wrong, then we
6 can adjourn the deposition and you can file

7 whatever motion you deem proper.

8 MR. KAPLAN: No, you've actually wasted
9 enough of my time. I am going to go ahead and
10 take my deposition, and I will just tell you that
11 if you want to direct him not to answer on the
12 record, you go ahead and do so. You are doing so
13 at your own risk of sanctions.

14 MR. BLACKMAN: Okay. Go ahead.

15 MR. KAPLAN: That's fine.

16 BY MR. KAPLAN:

17 Q. Does the bank have any policies or
18 procedures about employees investing in their
19 customers?

20 A. Don't know.

21 Q. Did you check with anyone at the bank
22 about that before you made your purchase?

23 MR. BLACKMAN: I'm going to object. I am
24 instructing the witness not to answer. This is

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1 not on the topics to be covered.

2 MR. KAPLAN: The policies and procedures of
3 the bank?

4 MR. BLACKMAN: This is not -- no. You
5 covered the policies and procedures of the bank.
6 He answered he didn't know. Now you are asking
7 him whether he personally in his individual
8 capacity spoke with anybody.

9 MR. KAPLAN: Are you instructing him not to
10 answer?

11 MR. BLACKMAN: I am.

12 MR. KAPLAN: Okay. That's fine.

13 BY MR. KAPLAN:

14 Q. Okay. Did you check the bank policies
15 at all before you decided to make your purchase?

16 MR. BLACKMAN: Objection. Assumes facts not
17 in evidence. He has already testified he wasn't
18 aware of any bank policies.

19 MR. KAPLAN: Now I am asking him if he
20 bothered to look.

21 MR. BLACKMAN: Well, if he bothered to look,
22 then he would be able to tell you whether they
23 existed.

24 MR. KAPLAN: Are you telling him not to

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1 answer?

2 MR. BLACKMAN: No.

3 BY MR. KAPLAN:

4 Q. Did you check to see if there were any
5 bank policies? You can answer.

6 MR. BLACKMAN: You can answer if you
7 remember whether you checked or not.

8 BY THE WITNESS:

9 A. No.

10 BY MR. KAPLAN:

11 Q. Okay. Did you receive a commission or
12 any other fee from Circle Group with respect to
13 the people you introduced?

14 MR. BLACKMAN: I'm going to object and
15 instruct the witness not to answer for the
16 reasons I've already set forth.

17 BY MR. KAPLAN:

18 Q. How many people did you introduce that
19 purchased shares of Circle Group?

20 MR. BLACKMAN: I'm going to instruct the

21 witness not to answer this line of questioning.
22 You can ask your questions, and I am going to
23 have the same answer for the reasons I have
24 already set forth.

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1 MR. KAPLAN: Have you noted your appearance
2 on the record today?

3 MR. BLACKMAN: Uh-huh.

4 MR. KAPLAN: Is that yes?

5 MR. BLACKMAN: Yes.

6 MR. KAPLAN: I want to know where to send
7 the motion.

8 Okay. We're done.

9 MR. BLACKMAN: Okay.

10 MR. KAPLAN: We're all done. Thank you.

11 Actually, I'm done. Jeff, do you have
12 any questions?

13 MR. BARCLAY: No, I don't.

14 THE COURT REPORTER: Signature?

15 MR. BLACKMAN: We'll reserve.

16 FURTHER DEPONENT SAITH NOT.
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF ILLINOIS
3 FT. LAUDERDALE DIVISION
4 Case No. 02-61082 CIV-Dimitrouleas
5 CIRCLE GROUP INTERNET, INC.,)
6 an Illinois Corporation,)
7 Plaintiff,)
8 vs.)
9 ATLAS PEARLMAN, TROP & BORKSON,)
10 P.A., et al.,)

11 Defendants.)

12 I hereby certify that I have read the
13 foregoing transcript of my deposition given at
14 the time and place aforesaid, consisting of Pages
15 1 to 36, inclusive, and I do again subscribe and
16 make oath that the same is a true, correct and
17 complete transcript of my deposition so given as
18 aforesaid, and includes changes, if any, so made
19 by me.

20 MARIO VALENTE

21 SUBSCRIBED AND SWORN TO

22 before me this day

23 of , A.D. 20 .

24 Notary Public

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38

1 STATE OF ILLINOIS)

2)

3 COUNTY OF L A K E)

4 I, ANNETTE M. MONTALVO, a Notary

5 Public within and for the County of Lake, State

6 of Illinois, and a Certified Shorthand Reporter
7 of said state, do hereby certify:

8 That previous to the commencement of
9 the examination of the witness, the witness was
10 duly sworn to testify the whole truth concerning
11 the matters herein;

12 That the foregoing deposition
13 transcript was reported stenographically by me,
14 was thereafter reduced to typewriting under my
15 personal direction and constitutes a true record
16 of the testimony given and the proceedings had;

17 That the said deposition was taken
18 before me at the time and place specified;

19 That the reading and signing by the
20 witness of the deposition transcript was agreed
21 upon as stated herein;

22 That I am not a relative or employee
23 or attorney or counsel, nor a relative or
24 employee of such attorney or counsel for any of

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1 the parties hereto, nor interested directly or
2 indirectly in the outcome of this action.

3 IN WITNESS WHEREOF, I do hereunto set
4 my hand and affix my seal of office at Chicago,
5 Illinois, this 3rd day of December, 2003.

6
7
8
9
10 Notary Public, Lake County, Illinois.
11 My commission expires 3/3/2007.

12
13
14
15 C.S.R. Certificate No. 84-3967.

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1

I N D E X

2

WITNESS

EXAMINATION

3

MARIO VALENTE

4

By Mr. Kaplan

4

5

6

7

8

E X H I B I T S

9

NUMBER

MARKED FOR ID

10

Deposition Exhibit

11

No. 63..... 6

12

No. 64..... 7

13

No. 65..... 8

14

No. 66..... 17

15

No. 67..... 19

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INSTRUCTION TO THE WITNESS NOT TO ANSWER

Vale1202

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